



PILLSBURY WINTHROP

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September 3, 2002

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VIA FACSIMILE

Karen Getman, Chairman
Commissioners Downey, Knox and Swanson
Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, CA 95814

Re: Petition to Amend Regulation 18531.7 - Payments for Communications to
Members, Employees and Shareholders

Dear Chairman Getman and Commissioners:

This letter is in support of the Petition to Amend FPPC Regulation 18531.7, submitted by Lance Olson on behalf of the California Federation of Labor, AFL-CIO, the California State Council of Service Employees International Union, and the California Teachers Association. In particular, we agree with Mr. Olson that subdivision (e) of Regulation 18531.7, as currently drafted, is inconsistent with Government Code section 85312.

Government Code section 85312 provides the following exception to the definition of contribution:

"For purposes of this title, payments for communications to members, employees, shareholder, or families of members, employees or shareholders of an organization for the purpose of supporting or opposing a candidate or a ballot measure are not contributions or expenditures, provided those payments are not made for general public advertising such as broadcasting, billboards, and newspaper advertisements...."

Government Code section 85312 recognizes that membership communications are fundamentally different from other political communications. People join a membership organization because they agree with the goals of the organization and they want to receive the benefits of membership, which often include the communications about the organization's political and other viewpoints. Thus, membership communications differ greatly from the typical slate mailers and other unsolicited political communications that we receive at election time. This fundamental difference exists, regardless of whether the

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membership communications are made at the suggestion of, or in concert with, any candidate or ballot measure committee.

Although Government Code section 85312 does not specifically state how it might apply to payments for communications that are made at the behest of a candidate or committee, such payments are implicitly covered by the statute. Prior to the enactment of Section 85312, when an organization paid for a communication that expressly advocated support of a candidate or ballot measure, that payment was reportable by the organization as either:

1. An independent expenditure, provided that the organization made the payment for the communication independently of the candidate or ballot measure committee supported by the communication; or
2. A contribution to the candidate or ballot measure committee, provided that the organization made the payment for the communication "at the behest" of the candidate or ballot measure committee supported by the communication (also referred to as an in-kind contribution to the candidate or ballot measure committee).

In other words, in the absence of Government Code section 85312, the only scenario under which a payment for a membership communication is a contribution is when the payment is made at the behest of a candidate or ballot measure committee, resulting in an in-kind contribution to the candidate or committee. Accordingly, when Government Code section 85312 states that payments for membership communications are neither contributions nor expenditures, the only "contributions" that it can affect are payments made "at the behest" of a candidate or ballot measure committee.

At its August meeting, the Commission adopted subdivision (e) of current Regulation 18531.7, which states that an organization's payments for communications to its members are contributions if the payments are made "at the behest of a candidate or committee." This regulation is inconsistent with Government Code section 85312 because it eliminates the only exception to the definition of "contribution" that is created by that statute.

Accordingly, we ask the Commission to amend Regulation 18531.7 in the manner proposed in Mr. Olson's petition.



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Please do not hesitate to contact me if you have any questions concerning this letter. I also plan to attend the Commission's September 5th meeting, at which this matter will be considered.

Very truly yours,

A handwritten signature in cursive script, reading "Kathryn E. Donovan".

Kathryn E. Donovan

cc: Mark Krause, Esq.
Luisa Menchaca, Esq.